

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-5011/12

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

In the Matter

of

REA HOLDING CORPORATION,
THE EXPRESS COMPANY, INC.,
REA EXPRESS, INC., f/k/a
Railway Express Agency, Inc.,
REXCO SUPPLY CORPORATION,



Bankrupts.

BROTHERHOOD OF RAILWAY, AIRLINE, AND
STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES,

and

WISEHART, FRIOU & KOCH,

Appellants,

C. ORVIS SOWERWINE,

Trustee-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF TRUSTEE-APPELLEE

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Dated: September 9, 1977

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STATEMENT OF ISSUES

1. Whether the allowances granted to the Trustee and his counsel by order of the District Court were unreasonable and constituted an abuse of discretion.

2. Whether the Bankruptcy Court and the District Court erred in certifying and granting allowances to the Trustee and his counsel when there had been unsupported allegations made that the Trustee had a conflict of interest but no proceeding had been commenced to test the merits of those allegations.

3. Whether appellant should have been permitted to question the Trustee at the hearing on the Trustee's Application as to whether the Trustee had a conflict of interest when appellant had never raised such issue during the bankruptcy proceeding which had been pending since November 7, 1976.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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In the Matter of	:	
	:	<u>APPELLEE'S BRIEF</u>
REA HOLDING CORPORATION,	:	
THE EXPRESS COMPANY	:	
REA EXPRESS, INC., f/k/a	:	
Railway Express Agency, Inc.	:	
REXCO SUPPLY CORPORATION,	:	
	:	
Bankrupt.	:	

- - - - - x

PRELIMINARY STATEMENT

On February 18, 1975, REA Holding Corporation, The Express Company, REA Express, Inc., f/k/a Railway Express Agency, Inc. and Rexco Supply Corporation (the "Bankrupts") filed petitions for arrangements under Chapter XI of the Bankruptcy Act, §322. The matter was referred to the Honorable John J. Galgay, Bankruptcy Judge. On November 6, 1975, the Bankrupts were adjudicated bankrupts. On November 7, 1975, C. Orvis Sowerwine qualified as Trustee in Bankruptcy of all the Bankrupts (the "Trustee").

On January 18, 1977, the Trustee applied to the Bankruptcy Court for interim allowances for himself, his general counsel and some of his special counsel (the "Trustee's Application"). On February 18, 1977, the Trustee's Application was heard by the Bankruptcy Court. Two creditors appeared and objected to the requested allowances for the Trustee and his

general counsel, Whitman & Ransom, Esqs. and Marcus & Angel, Esqs. The first creditor was Wisehart, Friou & Koch, Esqs. (the "Wisehart firm") who were, and still are, special counsel to the Trustee with respect to certain litigations, appeared pro se; and the other creditor was the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees ("BRAC") the labor union which had represented many of the Bankrupts' employees. At the request of BRAC, the hearing was continued on February 28, 1977, to give the BRAC attorneys ample time to prepare an examination of the Trustee and his general counsel. At the hearing on February 28, the Trustee was examined by one of the BRAC attorneys.

On March 15, 1977, Judge Galgay issued the Certificate on Application for Interim and Final Allowances (the "Certificate"). On March 28, 1977, after a hearing on the Trustee's Application and the Certificate in the United States District Court for the Southern District of New York before Judge Charles M. Metzner, an order was entered approving with modifications the Trustee's Application and the Certificate (the "Order"). By Notices of Appeal dated April 26 and 29, 1977, both BRAC and the Wisehart firm appealed Judge Metzner's order to this Court. By order dated June 3, 1977, this Court consolidated the BRAC appeal and the Wisehart firm appeal.

On August 9, 1977, in conformity with this Court's

scheduling order, the BRAC brief and appendix were served on the Trustee, but no brief has been served on behalf of the Wisehart firm and we therefore assume that the appeal of the Wisehart firm has been abandoned. Consequently, we have limited the discussion in this brief to the points raised by the BRAC brief and have not burdened this Court with arguments or an appendix relating primarily to the Wisehart firm's appeal.

STATEMENT OF FACTS

On February 18, 1975, REA Holding Corporation, The Express Company, Inc., REA Express, Inc., f/k/a Railway Express Agency, Inc. ("REA Bankrupt") and Rexco Supply Corporation (the "Bankrupts") filed petitions for arrangements under Chapter XI of the Bankruptcy Act in the Southern District of New York. The matters were referred to the Honorable John J. Galgay, Bankruptcy Judge. On November 6, 1975, the Bankrupts were adjudicated bankrupts. On November 7, 1975, C. Orvis Sowerwine qualified as Trustee in Bankruptcy of all the Bankrupts (the "Trustee") by filing his bonds.

On February 18, 1977, on motion of the Trustee, a hearing was held in the Bankruptcy Court on notice to all creditors on an Application for Interim and Final Allowances (the "Trustee's Application"). The Application sought interim allowances for the Trustee, his general counsel and some of his

special counsel and final allowances for some of the Trustee's special counsel. Two creditors appeared at the hearing and objected to the allowances.

One of the objecting creditors was the law firm of Wisehart, Friou & Koch, Esqs. (the "Wisehart firm") who were and still are special counsel to the Trustee on certain litigations. The Wisehart firm had been restrained by a temporary restraining order from representing interests adverse to the Trustee. The Trustee had moved to disqualify the Wisehart firm from representing interests adverse to the Trustee ("Representing Adverse Interests") and from disclosing confidential information revealed to the Wisehart firm in their role as special counsel to the Trustee ("Disclosing Confidential Information"). There is no need to regale this Court with all of the facts which led the Trustee to seek to disqualify the Wisehart firm. It will suffice to say that on December 24, 1976, after over 7 days of hearings on the Trustee's motion to disqualify the Wisehart firm, Judge Galgay issued a temporary restraining order which restrained the Wisehart firm from Representing Adverse Interests and Disclosing Confidential Information. The involvement of the Wisehart firm in this matter was therefore limited to raising only the issue of the "reasonableness" of the allowances granted. We submit that not one of the eight issues listed by the Wisehart firm in their designation of issues in their

Pre-Argument Statement relates to reasonableness, the sole ground on which the Bankruptcy Court permitted an appeal by the Wisheart firm. Since the Wisheart firm has failed to file a brief (after requesting and obtaining two extensions of time from this Court) we conclude that such firm has abandoned its appeal and we will not allude to it further.

The other objecting creditor was the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees ("BRAC"). BRAC was the union which had represented a majority of the Bankrupts' unionized employees. At the February 18, 1977 hearing on the Trustee's Application BRAC appeared and sought to adjourn the hearing until the issue of the Trustee's alleged conflict of interest could be resolved. (BRAC Appendix pp. 15-17). Judge Galgay denied the request for an indefinite adjournment but agreed to adjourn the hearing for ten days to allow David J. Fleming, Esq., a partner of the firm of Reilly, Fleming & Reilly, counsel to BRAC, to prepare to examine the Trustee and Trustee's counsel on their applications. Mr. Fleming stated on the record that:

we are submitting applications in opposition to the attorney's fees and not necessarily to his [the Trustee's] fees. (BRAC Appendix p. 15)

During the ten days between the original and adjourned hearings, the Trustee's counsel made all of their files, time

records and even their personal diaries available to Mr. Fleming for his inspection. Mr. Fleming spent an entire day at the offices of the Trustee's counsel examining these records and asking questions to clarify parts of the record he did not understand.

At the adjourned hearing on February 28, 1977, Mr. Fleming sought to examine the Trustee solely on the question of whether or not the Trustee had a conflict of interest. Judge Galgay advised Mr. Fleming that the proper way to raise the question of a trustee's alleged conflict of interest is in a proceeding to disqualify the trustee under Bankruptcy Rule 221. Judge Galgay pointed out that the issue in a hearing on an application for interim allowances under Local Rule 16 is the reasonableness of the allowances sought. After hearing the Judge's comments and after abandoning the issue of the Trustee's alleged conflict of interest, Mr. Fleming said

I am not doubting the hours that the Trustee spent. (BRAC Appendix p. 65)

In response to Judge Galgay's instruction to

...zero in on the applications for allowances; is Mr. Sowerwine entitled to the application he's made, is Whitman & Ransom entitled to the application they have made, is Marcus & Angel entitled to it? (BRAC Appendix p. 64)

Mr. Fleming said:

I have no position either way on applauding them or being critical of them. (BRAC Appendix p. 64)

and later:

I didn't read the background on these parties. I am not doubting the hours that the trustee spent. I am in no position to doubt the hours. (BRAC Appendix p. 65)

When Mr. Fleming sought to raise the issue of the alleged conflict of interest at another point in his examination Judge Galgay advised him that

All of that area is not relevant to whether or not the applications that have been filed for services performed are reasonable, unreasonable or otherwise. (BRAC Appendix p. 78)

In response to the Judge's comment Mr. Fleming said:

Based on that, let me say this. That if I were to attempt to examine not time records alone, which are really a summary, but the underlying documents behind all these time records, I had been spending perhaps enough time of men in examining those records, which were offered to me, for which I am grateful and I think the offer was sincere, it would probably run the union in dues money possibly a hundred thousand to examine all these records.

I don't propose to put the union through that kind of expense.

I therefore will terminate my examination of Mr. Sowerwine. (BRAC Appendix pp. 78, 80 these are two pages in sequence but are mis-numbered omitting p. 79)

And later in the hearing Mr. Fleming said:

I want to say for the record, I have no personal knowledge or personal suspicions that there is anything wrong with their records.

I don't want it to appear that I am telling you that there is something wrong here but I can't find it.

I am telling you that you -- one could think that there is something wrong here and if it was, I would like to have found it.

With that, I will stop my interrogation and I won't bother the attorneys either.
(BRAC Appendix pp. 81, 82)

It is clear that Mr. Fleming never asked the Trustee or the attorneys any question dealing with any subject other than conflict of interest. Indeed, from the statements quoted above, it is clear that BRAC counsel made no objection to the allowances on any basis cognizable in law.

On March 15, 1977 Judge Galgay issued a Certificate on Application for Interim and Final Allowances. The Certificate approved the Trustee's application for an interim allowance of \$50,000. The Certificate states, inter alia, that based on the fact that "in excess of \$29,500,000 has passed through his hands as Trustee...he would be entitled to commissions in excess of Five Hundred Ninety Thousand Dollars (\$590,000)." (BRAC Appendix pp. 86, 87) The Certificate approved with modification the joint application of the Trustee's general counsel, Whitman & Ransom and Marcus & Angel for 75% of their time charges. The Certificate reduced the attorneys' application by 1000 hours, which time was attributable to proceedings involving the Wisehart

firm's status. (id. pp. 89-91) On March 28, 1977 Judge Charles M. Metzner of the United States District Court for the Southern District of New York issued an order (the "Order") approving the Certificate with further modification as to the allowances for the attorneys. The Order approved the Certificate but stated that Judge Metzner had never allowed more than 50% of the total billable time for an attorney's interim allowance and consequently reduced the amount allowed for the attorneys from \$682,500 to \$455,000. (BRAC Appendix p. 94). Judge Metzner approved the allowance for the Trustee without comment. This is the order from which this appeal is taken.

With respect to the artificial issue of the "alleged" conflict of interest it should be noted that no proceeding to remove the Trustee for a conflict of interest has ever been instituted and none is pending, contrary to the statement made on page 3 of the BRAC brief (Issue No. 1) that a separate proceeding was pending before the Bankruptcy Judge which, inter alia, sought to disqualify the Trustee and his counsel. This so called "separate proceeding" is nothing more than a defense raised by the Wisehart firm to disqualify the Trustee and his counsel from proceeding with the Trustee's motion to disqualify the Wisehart firm. At the hearing on a petition to transfer the Bankrupts to a proceeding under Chapter X of the Bankruptcy Act, Judge Galgay found, in a report on such petition

dated September 28, 1976, that no issue of conflict of interest had been raised because no proceeding to remove the Trustee had been instituted. Judge Lloyd F. Mac Mahon of the United States District Court for the Southern District of New York adopted Judge Galgay's finding at a hearing on the issue of whether the Chapter X petition had been filed in good faith. Judge Mac Mahon's order dismissing the Chapter X petition was affirmed by this Court in In the Matter of REA Holding, et al; Manning, et al v. Sowerwine, Docket No. 76-5039 (2d Cir. July 27, 1977).

Therefore, the Court must affirm Judge Metzner's order because the issue of an alleged conflict of interest by the Trustee has never been raised by either this appellant or any other creditor. BRAC advances no ground for reversing the order granting such allowances.

POINT I

APPELLANT HAS FAILED TO ADVANCE EVEN ONE
GROUND TO SHOW ABUSE OF DISCRETION BY THE
BANKRUPTCY COURT OR THE DISTRICT COURT,
NOR HAS APPELLANT ASSERTED ANY OTHER
GROUND WHICH REQUIRES THIS COURT TO REVERSE
THE DISTRICT COURT'S ORDER GRANTING ALLOW-
ANCES TO THE TRUSTEE OR HIS COUNSEL

No ground whatsoever is even suggested by appellant which is sufficient in law to overturn the District Court's order granting allowances to the Trustee and his counsel. The granting of allowances is a matter of discretion and no abuse of discretion has been alleged. Appellant is really saying that it should have been permitted to conduct a fishing expedition to ascertain whether or not it could develop some objection on a theory of conflict of interest - the only subject of appellant's questions at the continued hearing on February 28, 1977.

The allowances to the Trustee reflect the value of the efforts of a highly sophisticated and industrious Trustee. The Trustee is a lawyer, a graduate of the Harvard Law School, Class of 1941, who had been a partner of the law firm of Chadbourne, Parke, Whiteside & Wolff, Esqs. and who later became a Senior Vice-President of Finance of Shearson Hayden Stone, Inc. a highly regarded investment banking and stock brokerage firm. He accepted the position as standby trustee of the Bankrupts during the Chapter XI proceeding at the urging of the Official Creditors' Committee of the Bankrupts. After the

adjudication of the Bankrupts the Trustee assumed his position and, subsequently, took a leave of absence without pay from Shearson Hayden Stone, Inc. Since the adjudication on November 6, 1975, the Trustee has worked almost exclusively on administration of the Bankrupts' estates and only occasionally has accepted limited projects from Shearson Hayden Stone without compensation. (BRAC Appendix p. 87). As stated by Judge Galgay in the Certificate on Application for Allowances:

C. Orvis Sowerwine is Trustee for the four bankrupts. From the time he qualified as Trustee on November 7, 1975 to the date of his application for an interim allowance, in excess of Twenty-Nine Million Five Hundred Thousand Dollars (\$29,500,000) has passed through his hands as Trustee. Based on this figure, he would be entitled to commissions in excess of Five Hundred Ninety Thousand Dollars (\$590,000). Having previously received an interim allowance of \$50,000, at this time, he has requested an additional interim allowance of \$50,000. Because of his extremely diligent and conscientious attention to every detail in the administration of these bankrupts and because of the actions taken on his own initiative, for example the active development of Rexco operation which produced a cash profit for the estate of over \$900,000 from November 1, 1975 to November 1976 and his development of a salable asset out of the hodgepodge of the bankrupts' operating rights which could be sold, I believe it only fair that Mr. Sowerwine receive, at this time, the full amount of his request for interim compensation. Mr. Sowerwine testified at the hearing on his first application for interim allowances that since he had assumed the Trusteeship, he had been utilizing savings to live. Mr. Sowerwine testified at the hearing on February 18, that he had been serving his employer, Shearson Hayden Stone, Inc., without compensation and had been on a leave of absence subsequent to May 14, 1976. (BRAC Appendix pp. 86, 87)

Judge Galgay had stated at an earlier point in the Certificate, that the theory underlying the granting of interim allowances is that:

In protracted, complicated cases such as these, it seems to me that it is an injustice to the Court-appointed professionals (attorneys, accountants, trustees), to expect them to perform high quality services, often under great time pressures, involving extremely complex factual and legal issues while compelling them to wait many years before receiving any compensation for their services. (BRAC Appendix p. 85)

This Court has held that the decision of the Bankruptcy Court as to what is proper compensation for a Bankruptcy trustee and his attorneys must be given great weight and should be overturned only where the decision is arbitrary and unreasonable. In re Paramount Merrick, Inc. 252 F.2d 482 (2d Cir. 1958); In re Schautz 390 F.2d 797 (2d Cir. 1968). In the Paramount case the Court refused to overturn an award of fees to attorneys for the receiver and said:

Although we have jurisdiction to review the compensation, 11 U.S.C.A. §47, we are reluctant to overturn the determination unless it can be shown that the allowance was arbitrary and unreasonable...We will not normally substitute our judgment for that of the referee and the Bankruptcy Court...and we are not persuaded that we should reject their determination of the proper fees. 252 F.2d at 485. (emphasis supplied)

The decision in Paramount denied the appellants' attempt to have the Court increase the allowance approved by the Bankruptcy Court while in this case the appellants are

claiming that the allowances are excessive. However that distinction should not affect the weight given to the Bankruptcy Court's determination.

The BRAC brief relies on Matter of First Colonial Corp. of America 544 F.2d 1291 (5th Cir., January 10, 1977) for the question of what are reasonable allowances, but that case is entirely inapposite. First Colonial involved a bankrupt estate, which, after liquidation, was solvent. The principal holdings of the case are 1) that a shareholder has standing to contest an award of fees where the Bankrupt is solvent and an equity exists for shareholders after payment of all debts and 2) that there are certain procedures to be followed in considering attorneys fees. Neither of these two issues are relevant to this appeal where the Bankrupts are insolvent and the proper procedures in the granting of the application for fees were followed and are not at issue in this appeal. The attempt to cite First Colonial for the proposition of the reasonableness of fees should be considered along with the court's statement that "we do not examine the findings of fact. Nor do we reach the question of whether the fees were reasonable." 544 F.2d at 1298. It is clear therefore that First Colonial has no relevance to the issues in this appeal.

The only other case cited in the BRAC brief on the issue of the reasonableness of allowances is Matter of Beverly

Crest Convalescent Hospital Inc. 548 F.2d 817 (9th Cir. March 2, 1977). The Beverly Crest case is clearly distinguishable because it dealt with final allowances for a receiver and his attorneys in two combined proceedings under Chapter XI and Chapter XII. It is also relevant that the receiver in Beverly Crest failed in his duty to keep meticulous time records and more than one-half of his time for which compensation was sought was categorized as "estimated time expended". In contrast, in the instant case, the Trustee submitted complete, detailed time records and his general counsel submitted a detailed affidavit of services performed consisting of 217 pages and, in addition, computer print-outs based on daily time records for one law firm and hand kept records for the other firm. Therefore it is clear that neither First Colonial nor Beverly Crest are analogous or relevant to the instant appeal.

It should be noted that the issue of reasonableness was not raised by BRAC before either Judge Galgay or Judge Metzner, and the issue was not preserved for appeal in the BRAC Civil Appeal Pre-Argument Statement Form-C.

Therefore, in light of the assets accumulated and the expertise expended, there is no basis to the argument that the interim allowances are excessive. The Court should affirm Judge Metzner's order approving the allowances because the interim allowances are reasonable and no abuse of discretion has been shown.

POINT II

THERE WAS NO ERROR IN THE BANKRUPTCY COURT
CERTIFYING THE APPLICATION FOR ALLOWANCES
OR THE DISTRICT COURT APPROVING THE
ALLOWANCES IN THE FACE OF UNSUPPORTED
ALLEGATIONS OF A CONFLICT OF INTEREST

There is no basis for a charge of abuse of discretion to be made against either the Bankruptcy Court for certifying the recommendation for interim allowances or the District Court for approving the interim allowances. Where there are merely allegations that the objectant would like to explore to ascertain whether the Trustee has a conflict of interest and no attempt has been made to prove such allegations, to disallow the allowances would be unjustified.

Appellant cites In the Matter of the New York, New Haven & Hartford Railway Co.; Iannotti v. Manufacturers Hanover Trust Co., Docket Nos. 76-5025, 76-5033, 76-5037 (2d. Cir. March 18, 1977). In Iannotti an indenture trustee ("Manufacturers") under two different debenture indentures resigned from both when it developed that there was a conflict between the interests of the holders of the two debentures. Manufacturers applied for allowances in connection with its services and the successor indenture trustees of both debentures appealed the granting of such allowances on the grounds that Manufacturers had a conflict of interest and that the order allowing fees was an

abuse of discretion by the District Court.

The Court affirmed the order granting the allowances.

The Court stated:

A basic tenet of trust law is that "[o]rdinarily a trustee does not commit a breach of trust if he does not intentionally or negligently do what he ought not to do or fail to do what he ought to do." Restatement (Second) of Trusts §201 (1959), comment a. The element of voluntariness is critical.²³ Manufacturers did not commit a breach of trust simply by finding itself between conflicting interests when the Penn Central filed for reorganization. If there was a breach at all, it would have occurred when Manufacturers failed to extricate itself from the conflict. (Id at p. 2462; footnote omitted)

The Court went on to say that Manufacturers, the indenture trustee, made every possible effort to extricate itself, and that it never concealed the facts behind the conflict (id at pp. 2462, 2463)

The Iannotti case has no application to the present appeal. The Trustee has not resigned, no proceedings are pending to require him to resign, no charges have ever been formally made. All that appellant asserts is that it should have been permitted to conduct a fishing expedition to see if it could find evidence to make such a charge. If such questioning were permitted in a hearing on an application for allowances, hearings could be dragged on endlessly while any disgruntled creditor conducted endless examinations to ascertain whether a ground might be found on which to base an objection. Needless to say, no citation of authority is found in appellant's brief to support such a proposition.

POINT III

THE ISSUE OF THE TRUSTEE'S ALLEGED CONFLICT OF INTEREST HAS NEVER BEEN PROPERLY RAISED

The issue of the Trustee's alleged conflict of interest has never been properly raised. The procedure for raising such an issue and for removing a trustee for an alleged conflict of interest, or some other cause, is clearly set out in the Bankruptcy Act and Rules, and that procedure has never been followed by the appellants or anyone else in this proceeding. Therefore, no question of a conflict of interest is present in this appeal or in the orders from which this appeals is taken. No such question was properly raised before either the Bankruptcy Court or the District Court.

The power to approve the appointment or election of trustees, as well as the power to remove trustees for cause, is established in Bankruptcy Act §2(a)(17); 11 U.S.C. §11(a) 17. The qualifications of a trustee are set forth in Bankruptcy Rule 209(d) which specifies that: "A Trustee shall have no interest adverse to that of the estate..." If a trustee fails to meet the required qualifications of Rule 209(d), the court may remove the trustee on motion by any party in interest or sua sponte, in either case after a hearing on notice. Bankruptcy Rule 221(a).

Therefore, the procedure for raising the issue of a trustee's conflict of interest and the remedy for such a con-

flict are clear. A motion on notice to all creditors must be made to remove the trustee. No such procedure was ever even attempted in this case. The BRAC brief as much as admits that no such motion was ever made. (BRAC brief p. 6) The argument in the BRAC brief is that the Bankruptcy Judge was aware of allegations of conflict of interest and should therefore have refrained from going forward with the motion for interim allowances. This argument is contrary to the plain meaning of the Bankruptcy Act and Rules referred to above. Rule 221 clearly states that any party can move to have a trustee removed or the court on its "own initiative...may remove a trustee..." (emphasis supplied). Neither BRAC nor any other party has brought on a proceeding to remove the Trustee. And in the complete absence of any evidence which would raise even an inference of a conflict of interest which would justify the holding of a hearing to remove the Trustee, it is ridiculous to argue that the Judge should have held such a hearing sua sponte and that failure to do so is reversible error.

In the absence of a motion to remove the Trustee, the Appellants should not be heard to complain that no determination of that issue has been made. It is a blatant attempt to use insinuation in lieu of a proper determination which appellants could have sought at any time and which they have not sought. Therefore, the alleged conflict of interest of the Trustee has

never been properly raised and there is no error in the District Court's approval of the Trustee's Application.

CONCLUSION

1. The allowances to the Trustee contained in the District Court's order are neither excessive nor unreasonable considering the size and complexity of the Bankrupts' estates, the sophistication of the Trustee and his counsel, the large amount of work which has been performed and the results obtained.

2. The issue of the Trustee's alleged conflict of interest was never properly raised and appellant could not seek to raise it before the Bankruptcy Court at the hearings on the application for interim allowances.

For all of the above reasons the order of the District Court granting allowances to the Trustee and his counsel should be affirmed.

Dated: New York, New York
September 9, 1977

Respectfully submitted,

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